



Film Production Services Tax Credit and Film Production Company Investment Tax Credit Application Manual

Prepared by:

Wisconsin Department of Commerce
201 West Washington Avenue
P.O. Box 7970
Madison, Wisconsin 53707

January 9, 2008

APPLICATION PROCESS

The **Film Production Services Tax Credit** applies to eligible claimants who incur production expenditures for making an accredited production in Wisconsin. The **Film Production Company Investment Tax Credit** applies to eligible claimants who establish a film production company in Wisconsin.

This application must be completed in order for the Wisconsin Department of Commerce ("Department") to determine the following:

- Eligible claimants.
- Accredited productions.
- Expenditures that are eligible for the **Film Production Services Tax Credit** and the **Film Production Company Investment Tax Credit**.
- An estimated amount of tax credits that the claimant is eligible for.

The Department's approval of the application represents the first stage in the process. Before an eligible claimant can claim any tax credits on its Wisconsin income tax return, the claimant will have to submit to the Department a project report and documentation of the eligible expenditures that were incurred. The Department will then verify documented expenditures and release the appropriate amount of tax credits to the claimant for inclusion on the claimant's Wisconsin income tax return.

The **Film Production Services Tax Credit** and the **Film Production Company Investment Tax Credit** application process involves the following steps:

1. The Applicant will submit the completed application to the Department for review. The Department may request supplemental information in response to a submitted application. Such additional information will be subject to a deadline as specified by the Department. An application for the **Film Production Services Tax Credit** must be submitted at least 24 hours prior to the start of principal filming, taping, or game development.
2. Department staff will review the application and make a recommendation to the Secretary's Office, which will include a preliminary estimate on the amount of tax credits the claimant is eligible for. The Secretary's Office will:
 1. Make a positive determination, in which case the applicant will receive an offer letter detailing the terms and conditions of the Department's proposed participation.
 - or
 2. Deny the proposal, in which case the applicant will receive a letter outlining the reasons for denial.

Mail or deliver the completed application to:

Wisconsin Department of Commerce
Bureau of Business Finance & Compliance
201 W. Washington Avenue
P.O. Box 7970
Madison, Wisconsin 53707

Note: Neither the Department of Commerce nor the Department of Revenue provides tax-consultation services relating to the tax credits that are addressed in this application form and in chapter Comm 133 of the Wisconsin Administrative Code. Such services may be available from a tax accountant or tax attorney. Some of these credits include refundable aspects, such as those addressed in section 71.07 (5f) (d) 2. of the Wisconsin Statutes, that may apply even where no tax is due.

PART I – APPLICANT/ELIGIBLE CLAIMANT INFORMATION
(Instructions on the following page)

I. APPLICANT/ELIGIBLE CLAIMANT INFORMATION:

Applicant Name:		
Company Name (if different from above):		
Organizational Structure: π C Corporation π S Corporation π LLC π Partnership π LLP π Sole Proprietorship π Non Profit π Other (Describe):		
Date of Formation:		
Address:	PO Box/Suite:	
City:	State:	Zip Code:
Phone Number:		Fax Number:
E-Mail Address:		WWW:
Federal Employer ID Number:		State of Organization:

Note: The Department may order a Dun and Bradstreet report on any participating entity.

II. CONTACT INFORMATION (if different from above):

Contact Name:		Title:
Address:		PO Box/Suite:
City:	State:	Zip Code:
Phone Number:		Fax Number:
E-Mail Address:		

III. COPYRIGHT INFORMATION (for the Film Production Services Tax Credit)

Is the applicant the owner of the copyright in the production? ☐ Yes ☐ No

(If yes, applicant must attach documentation verifying copyright ownership. If no, applicant must provide proof of a contract with the owner or agent of the copyright to provide services for the production.)

IV. DISTRIBUTION PLAN INFORMATION (for the Film Production Services Tax Credit)

Does the applicant have a plan for the commercial distribution of the finished production? ☐ Yes ☐ No

(If yes, applicant must attach a copy of the distribution plan. If no, a viable plan must be submitted to the Department prior to the release of any credits.)

Instructions for Part I – APPLICANT/ELIGIBLE CLAIMANT INFORMATION

I. APPLICANT INFORMATION

An “Eligible Claimant” for the **Film Production Services Tax Credit** is a film production company that operates an accredited production in Wisconsin, if the company owns the copyright in the accredited production or has contracted directly with the copyright owner or a person acting on the owner’s behalf, and if the company has a viable plan, as determined by the Department, for the commercial distribution of the finished production.

An “Eligible Claimant” for the **Film Production Company Investment Tax Credit** means a person who does business in Wisconsin as a film production company. “Person” includes natural persons, fiduciaries, and corporations, unless the context requires otherwise. A “Film Production Company” is defined as an entity that creates films, videos, electronic games, broadcast advertisements, or television productions, not including the productions specifically excluded under the definition of “accredited production” used for the **Film Production Services Tax Credit** (see Part II).

The applicant must submit the Federal Employee Identification Number – Tax ID (FEIN), or Social Security Number if the applicant is an individual. (See Exhibit 2.)

The state of organization is per the articles of incorporation/organization.

II. CONTACT INFORMATION

Complete this table if the individual to contact regarding questions concerning the project is different from the applicant given in the previous table.

III. COPYRIGHT INFORMATION

Applicant must attach documentation verifying either ownership of the copyright of the production, or proof of having contracted directly with the copyright owner or a person acting on the owner’s behalf, in order to be an Eligible Claimant for the **Film Production Services Tax Credit**.

IV. DISTRIBUTION PLAN INFORMATION

The applicant must have a viable plan for the commercial distribution for the finished accredited production in order to be an Eligible Claimant for the **Film Production Services Tax Credit**. The plan must be submitted to the Department before any credits can be released.

PART II – PROJECT INFORMATION
(Instructions on the following page)

I. Title of Production:	
II. Type of Production : <div style="margin-left: 20px;"> <input type="checkbox"/> Film <input type="checkbox"/> Video <input type="checkbox"/> Electronic Game <input type="checkbox"/> Broadcast Advertisement <input type="checkbox"/> Television Production <input type="checkbox"/> Other (Describe): </div>	
III. Production description: (Provide a detailed summary of the project. The summary should include but not be limited to production subject matter, story line, filming or taping location(s). Include any details on how Wisconsin is referenced or portrayed in the subject matter or story, if applicable. Include information on whether the project would occur in Wisconsin without the tax credits. Attach additional pages if necessary.)	
IV. Length of Production : <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <input type="checkbox"/> Less than 30 minutes <input type="checkbox"/> 30 Minutes or longer </div>	
V. Total Estimated Salaries and Wages :	
VI. Production Time-Line : Wisconsin production start date:	Complete production by:

Instructions for Part II – PROJECT INFORMATION

The information submitted in this section will help the Department determine whether the project is an “Accredited Production”.

An “Accredited Production” is defined as a film, video, electronic game, broadcast advertisement, or television production, as approved by the Department, for which aggregate salary and wages included in the cost of production for the period ending 12 months after the month in which the principal filming or taping of the production begins exceeds \$100,000 for a production that is 30 minutes or longer, or \$50,000 for a production that is less than 30 minutes.

An “Accredited Production” does **not** include any of the following, regardless of production costs:

- a) News, current events, or public programming of a civic or governmental function, or a program that includes weather or market reports.
- b) A talk show.
- c) A production with respect to a questionnaire or contest.
- d) A sports event or sports activity that is exclusively competitive in nature. (A travel promotion that addresses a sports event or sports activity is eligible.)
- e) A gala presentation or awards show.
- f) A finished production that solicits funds.
- g) A production for which the production company is required under federal law to maintain records with respect to performers in programs with sexually explicit content.
- h) A production produced primarily for industrial, corporate, or institutional purposes.

The Department will consider whether all of the following are likely in determining whether to accredit a production:

- 1. The production would not occur in Wisconsin without the tax benefits provided under the program.
- 2. The production would enhance economic development in Wisconsin.
- 3. The production would enhance the potential for increasing the film, video or electronic game industry in Wisconsin.
- 4. The production would not hurt the reputation of the state of Wisconsin.

PART III – SALARIES AND WAGES INFORMATION

(Instructions on the following page)

[illegible]

Instructions for Part III – SALARIES AND WAGES INFORMATION

For the **Film Production Services Tax Credit**, an Eligible Claimant may claim as a credit against the individual and corporate income and franchise taxes an amount equal to 25% of the salary or wages paid by the claimant to the claimant's employees in the taxable year for services rendered in Wisconsin to produce an accredited production and paid to employees **who were residents of Wisconsin at the time they were paid**. The salary or wages must be paid for services rendered after December 31, 2007, and directly incurred to produce the accredited production. The tax credit may not be claimed for the salaries or wages of the two highest paid Wisconsin resident employees.

The Wisconsin Department of Revenue, which reviews all claims for tax credits on Wisconsin income tax returns, defines Wisconsin residency as having the intent to live in Wisconsin permanently or indefinitely. The Department of Revenue will make the final determination on residency and may request additional information from the Eligible Claimant before approving any claims for tax credits.

List all of the positions or employees that are Wisconsin residents that will render services in Wisconsin for the accredited production. Give the estimated salary or wage for each eligible employee. Do not include the salaries or wages of the two highest paid Wisconsin resident employees. **For each job title or employee, provide an estimate of the salaries or wages to be paid by the claimant to the claimant employees (Wisconsin residents) in the taxable year for services rendered in the state to produce an accredited production.**

Unused tax credits amounts, in this category, may be carried forward up to 15 years to offset future tax liabilities.

PART IV – PRODUCTION EXPENDITURES/SALES TAX INFORMATION
(Instructions on the following page)

Production Expenditures	Estimated Costs	Estimated Wisconsin Sales and Use Taxes
Set construction and operation		
Wardrobe		
Make-up		
Clothing accessories		
Photography		
Sound recording		
Sound synchronization		
Sound mixing		
Lighting		
Editing		
Film processing		
Film transferring		
Special effects		
Visual effects		
Renting or leasing facilities or equipment		
Renting or leasing motor vehicles		
Food		
Lodging		
<i>Music (See instructions on following page)</i>		
<i>Air travel (See instructions on following page)</i>		
<i>Insurance (See instructions on following page)</i>		
<i>(List any other expenditures not included above. Attach additional pages if necessary.)</i>		
TOTAL		

Instructions for Part IV – PRODUCTION EXPENDITURES/SALES TAX INFORMATION

For the **Film Production Services Tax Credit**, an “Eligible Claimant” may claim as a credit against the individual and corporate income and franchise taxes an amount equal to 25% of the production expenditures paid by the claimant in the taxable year to produce an accredited production.

“Production expenditures” means any expenditures that were incurred in Wisconsin and directly used to produce an accredited production, including expenditures for set construction and operation, wardrobes, make-up, clothing accessories, photography, sound recording, sound synchronization, sound mixing, lighting, editing, film processing, film transferring, special effects, visual effects, renting or leasing facilities or equipment, renting or leasing motor vehicles, food, lodging, and any other similar expenditures as determined by Commerce.

“Production expenditures” also includes expenditures for the following:

- a) **Music** that is performed, composed, or recorded by a musician who is a resident of Wisconsin, or published, or distributed by an entity that has its headquarters in Wisconsin.
- b) **Air travel** that is purchased from a travel agency or company that has its headquarters in Wisconsin.
- c) **Insurance** that is purchased from an insurance agency or company that has its headquarters in Wisconsin.

“Production expenditures” do **not** include the following:

- a) **Any salaries or wages paid directly by an Eligible Claimant to the Eligible Claimant’s employees.**
- b) Expenditures for the marketing and distribution of an accredited production.

List all proposed or projected expenditures to be incurred in Wisconsin to produce the accredited production. List the total estimated cost for each production expenditure. Use the blank spaces for any production expenditure not listed in the table. Attach additional pages if necessary.

In lieu of completing page 9, the applicant may submit any spreadsheet, template, or other document which shows the estimated production expenditures. The Department may ask for additional information if such documentation is submitted.

If the amount of tax credit for the eligible production expenditures exceeds the taxpayer’s income or franchise tax liability, the amount of credit not used to offset the tax due will be certified by the Department of Revenue and refunded to the claimant.

For the **Film Production Services Tax Credit**, an Eligible Claimant may claim as a credit against the individual and corporate income and franchise taxes an amount equal to the Wisconsin 5.0% sales and use taxes that the claimant paid in the taxable year on the purchase of tangible personal property and taxable services that were used directly in producing an accredited production in Wisconsin, including all stages of production, from the final script to the distribution of the finished production.

List the total estimated Wisconsin sales and use taxes to be paid for each applicable expenditure.

For more information on Sales and Use Taxes in Wisconsin, go to the website
<http://www.revenue.wi.gov/pubs/pb201.pdf>

PART V – FILM PRODUCTION COMPANY INVESTMENT INFORMATION

(Instructions on the following pages)

Type of Production to be produced by the film production company (check all that apply):

☐ Film ☐ Video ☐ Electronic Game ☐ Broadcast Advertisement ☐ Television Production ☐ Other (Describe):

Provide a description of the types of films, videos, electronic games, broadcast advertisements and/or television productions to be produced (attach additional pages if necessary):

Purchase of Depreciable, Tangible Personal Property	Estimated Cost
TOTAL	

Real Property Expenditures	Estimated Cost
Acquisition	
Construction	
Rehabilitation	
Remodeling	
Repair	
Demolition	
TOTAL	

Investment description: (Provide a detailed summary of the Film Production Company project. Include information on whether the project would occur in Wisconsin without the tax credits. Attach additional pages if necessary.)

Instructions for Part V – FILM PRODUCTION COMPANY INVESTMENT INFORMATION

For the **Film Production Company Investment Tax Credit**, an Eligible Claimant may claim as a credit against individual and corporate income and franchise taxes, for the first three taxable years that the claimant is doing business in Wisconsin as a film production company, an amount that is equal to 15% of the following that the claimant paid in the tax year to establish a film production company in Wisconsin:

- The purchase price of depreciable, tangible personal property, such as business equipment or vehicles. The claimant must purchase the tangible personal property after December 31, 2007, and at least 50% of the property's use must be for the claimant's business as a film production company.
- The amount expended to acquire, construct, rehabilitate, remodel, or repair real property. A claimant may claim a credit for an amount expended to construct, rehabilitate, remodel, or repair real property, if the claimant began the **physical work** of construction, rehabilitation, remodeling, or repair, or any demolition or destruction in preparation for the physical work, after December 31, 2007, or if the completed project is placed in service after December 31, 2007. A claimant may also claim the credit for an amount expended to acquire real property, if the property is not **previously owned property**, and if the claimant acquires the property after December 31, 2007, or if the completed project is placed in service after December 31, 2007.

"Physical work" does not include preliminary activities such as planning, designing, securing financing, researching, developing specifications, or stabilizing property to prevent deterioration.

"Previously owned property" means real property that the claimant or a related person owned during the two years prior to doing business in Wisconsin as a film production company, and for which the claimant may not deduct a loss from the sale of the property to, or an exchange of the property with, the related person as defined under the federal Internal Revenue Code.

A "Film Production Company" is defined as an entity that creates films, videos, electronic games, broadcast advertisements, or television productions, **not** including the productions specifically excluded under the definition of "accredited production" used for the **Film Production Services Tax Credit**. (see page 6)

Check and describe the types of productions that will be produced by the film production company.

List all depreciable, tangible personal property items that are projected to be purchased during the next three years for the new film production company and the estimated cost for each item. List the estimated costs for all applicable real property expenses, including acquisition, construction, rehabilitation, remodeling, repair, and demolition. List all other applicable expenses and estimated costs on the blank spaces. Attach additional pages if necessary.

In lieu of completing page 11, the applicant may submit any spreadsheet, template, or other document which shows the estimated eligible expenditures. The Department may ask for additional information to verify any listed expenditure.

Provide a detailed description of the project to establish a film production company in Wisconsin, including, but not limited to, any pertinent dates or timeframes for any real property activities and the purchase of tangible personal property, square footage of facility, address, and when the film production company is expected to be placed in service.

The Department will consider whether all of the following are likely, in determining whether to issue a preliminary approval for establishing a film production company:

1. The film production company would not be established in Wisconsin without the tax benefits provided under the program.
2. The film production company would enhance economic development in Wisconsin.
3. The film production company would enhance the potential for increasing the film, video, or electronic game industry in Wisconsin.

Unused tax credit amounts may be carried forward up to 15 years to offset future tax liabilities.

PART VI – OWNERSHIP INFORMATION (unless publicly owned)

Name: (First, Middle Initial, Last)		Phone Number	Ownership %
1.			%
2.			%
3.			%
4.			%
5.			%
All others:			%
			100%

PART VII – LEGAL INFORMATION *

Has the applicant, any owner, officer, subsidiary or affiliate been involved in any lawsuits in the last 5 years or have any lawsuits pending?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Has the applicant, any owner, officer, subsidiary or affiliate ever been involved in any bankruptcy or insolvency proceedings or have any proceedings pending?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Has the applicant, any owner, officer, subsidiary or affiliate had any civil or criminal charges in the last 5 years that could have a material adverse impact on the project or have any charges pending?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Does the applicant, any owner, officer, subsidiary or affiliate have any outstanding tax liens?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please attach a detailed explanation of any YES responses.	
*An Application will be deemed ineligible and denied based on the falsification of information	

PART VIII – SUPPORTING DOCUMENTATION

1. Certification Statement (Exhibit 1)
2. Request for Taxpayer Identification Number [TIN] (Exhibit 2)
3. Text of Relevant Administrative Rule (Exhibit 3)

Exhibit 1

CERTIFICATION STATEMENT

THE APPLICANT:

1. Certifies that to the best of its knowledge and belief, the information being submitted to Commerce is true and correct and that supporting documentation for the claims and assertions made within this application is available to the Department for its review.
2. Certifies that the applicant is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it.
3. Certifies that the applicant is not in default under the terms and conditions of any grant or loan agreements, leases, or financing arrangements with its other creditors.
4. Certifies that the Department is authorized to obtain a credit check and Dun and Bradstreet on the applicant, the business and/or the individual(s).
5. Certifies that the applicant has disclosed and will continue to disclose any occurrence or event that could have an adverse material impact on the project. Adverse material impact includes but is not limited to lawsuits, criminal or civil actions, bankruptcy proceedings, regulatory intervention or inadequate capital to complete the project.
6. Understands that unless it qualifies as trade secret, all information submitted to Commerce is subject to Wisconsin's Open Records Law.

The applicant requests that Commerce treat the following items as TRADE SECRET:

	<u>Yes</u>	<u>No</u>	<u>NA</u>
A. Personal financial statements.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Personal or business tax returns.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Historical business financial statements.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Business financial projections.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Plan or study to be funded by Commerce.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. Business Plan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G. Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If Section 6 is left blank then all information provided to Commerce will be open to examination and copying.

Signature: _____ Date: _____
(Authorized Representative)

Name: _____ Title: _____
(Authorized Representative)

Exhibit 2

Substitute **W-9**

DOA-6448 (C06/94)(R02/97)

**TAXPAYER IDENTIFICATION NUMBER (TIN)
VERIFICATION**

Wisconsin Dept. of
Administration
DO NOT send to IRS

PRINT OR TYPE

Please see attachment or reverse for complete instructions. This form can be made available in alternative formats to qualified individuals upon request.

LEGAL NAME (As entered with IRS) If Sole Proprietorship enter your LAST, FIRST, MI	ENTITY DESIGNATION (Check ONE Only) <input type="checkbox"/> INDIVIDUAL / SOLE PROPRIETOR <input type="checkbox"/> CORPORATION (Includes Service Corporations) <input type="checkbox"/> LIMITED LIABILITY COMPANY <input type="checkbox"/> GOVERNMENT ENTITY <input type="checkbox"/> HOSPITAL EXEMPT FROM TAX OR GOVERNMENT OWNED <input type="checkbox"/> LONG TERM CARE FACILITY EXEMPT FROM TAX OR GOVERNMENT OWNED <input type="checkbox"/> ALL OTHER ENTITIES	
TRADE NAME If doing business as (D/B/A) or business name of Sole Proprietorship	TAXPAYER IDENTIFICATION NUMBER (Please include hyphens) If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, using your EIN may result in unnecessary notices to the requester. ____ _	
PRIMARY ADDRESS (For return of 1099 Form) PO Box or number and street City, State, Zip + 4	CHECK ONLY ONE <input type="checkbox"/> Social Security Number (SSN) <input type="checkbox"/> Employer Identification Number (EIN) <input type="checkbox"/> Individual Taxpayer Identification Number for U.S. Resident Aliens (ITIN)	
ORDER ADDRESS (Where order should be sent if different from primary) PO Box or number and street City, State, Zip +4		
REMIT ADDRESS (Where check should be sent if different from primary) PO Box or number and street City, State, Zip +4		
CERTIFICATION Under penalties of perjury, I certify that: 1. The number shown on this form is my correct taxpayer identification number, AND 2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding. Printed Name _____ Signature _____ Phone (____) _____ Title _____ Date _____ <div style="text-align: center; font-size: small;">Please Print</div>		FOR AGENCY USE ONLY Agency No. _____ Contact _____ Phone Number _____ <div style="text-align: center;">1099 <input type="checkbox"/> Yes <input type="checkbox"/> No VEND <input type="checkbox"/> Addition <input type="checkbox"/> Change</div>

Return this form to the address listed below. For your convenience this form has been designed for return in a standard window envelope.



Forms may be returned by use
of FAX Number:

INSTRUCTIONS FOR COMPLETING TAXPAYER IDENTIFICATION NUMBER VERIFICATION (Substitute W-9)

Legal Name As entered with IRS

Individuals: Enter Last Name, First Name, MI

Sole Proprietorships: Enter Last Name, First Name, MI

All Others: Enter Legal Name of Business

Trade Name

Individuals: Leave Blank

Sole Proprietorships: Enter Business Name

All Others: Complete only if doing Business as a D/B/A

Order Address

Address where order should be sent if different from primary address

Remit Address

Address where payment should be sent if different from primary address

Entity Designation

Check **ONE** box, which describes the type of business entity.

Taxpayer Identification Number

LIST ONLY ONE: Social Security Number **OR** Employer Identification Number **OR** Individual Taxpayer Identification Number.

If you do not have a TIN, apply for one immediately. Individuals use federal form SS-05 that can be obtained from the Social Security Administration. Businesses and all other entities use federal form SS-04 that can be obtained from the Internal Revenue Service.

Certification

The person signing this document should be a partner in the partnership, an officer of the corporation, the name of the individual listed or sole proprietor listed under legal name.

Privacy Act Notice

Section 6109 requires you to furnish your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, or contributions you made to an IRA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 31% of taxable interest, dividend, and certain other payments to a payee who does not furnish a TIN to a payer. Certain penalties may also apply.

Exhibit 3

Chapter Comm 133

FILM PRODUCTION ACCREDITATION PROGRAM

Subchapter I – Purpose, Scope and Authority.

Comm 133.10 Purpose, scope and authority. (1) The purpose and scope of this chapter is to establish the procedures for obtaining any of the following from the department, for use in claiming corresponding tax credits:

- (a) Accreditation of a production.
 - (b) A determination of the amount of expenditures that are directly used to produce an accredited production.
 - (c) Certification of expenses that are related to establishing a film production company in Wisconsin.
- (2) This chapter is promulgated under the authority of s. 560.206 (4), Stats.

Subchapter II – Accreditation of Productions

Comm 133.20 Definitions. In this subchapter:

- (1) The definitions in s. 71.07 (5f) (a) 1. to 3., Stats., shall apply.

Note: Sections 71.07 (5f) (a) 1. to 3., Stats., read as follows:

“1. ‘Accredited production’ means a film, video, electronic game, broadcast advertisement, or television production, as approved by the department of commerce, for which the aggregate salary and wages included in the cost of the production for the period ending 12 months after the month in which the principal filming or taping of the production begins exceeds \$100,000 for a production that is 30 minutes or longer or \$50,000 for a production that is less than 30 minutes. ‘Accredited production’ does not include any of the following, regardless of the production costs:

- a. News, current events, or public programming or a program that includes weather or market reports.
- b. A talk show.
- c. A production with respect to a questionnaire or contest.
- d. A sports event or sports activity.
- e. A gala presentation or awards show.
- f. A finished production that solicits funds.
- g. A production for which the production company is required under 18 USC 2257 to maintain records with respect to a performer portrayed in a single media or multimedia program.
- h. A production produced primarily for industrial, corporate, or institutional purposes.

2. ‘Claimant’ means a film production company that operates an accredited production in this state, if the company owns the copyright in the accredited production or has contracted directly with the copyright owner or a person acting on the owner’s behalf and if the company has a viable plan, as determined by the department of commerce, for the commercial distribution of the finished production.

3. ‘Production expenditures’ means any expenditures that are incurred in this state and directly used to produce an accredited production, including expenditures for set construction and operation, wardrobes, make-up, clothing accessories, photography, sound recording, sound synchronization, sound mixing, lighting, editing, film processing, film transferring, special effects, visual effects, renting or leasing facilities or equipment, renting or leasing motor vehicles, food, lodging, and any other similar expenditure as determined by the department of commerce. ‘Production expenditures’ include expenditures

for music that is performed, composed, or recorded by a musician who is a resident of this state or published or distributed by an entity that has its headquarters in this state; air travel that is purchased from a travel agency or company that has its headquarters in this state; and insurance that is purchased from an insurance agency or company that has its headquarters in this state. ‘Production expenditures’ do not include salary or wages or expenditures for the marketing and distribution of an accredited production.”

Note: 18 USC 2257, as referenced above in s. 71.07 (5f) (a) 1. g., relates to sexual exploitation and other abuse of children.

Note: “Production expenditures” do not include salary or wages paid directly by a claimant to the claimant’s employees.

(2) “Department” means the department of commerce.

(3) “Incurred” means funds equal to the total cost have been dispersed by a claimant.

(4) “Person” includes natural persons, fiduciaries, and corporations, unless the context requires otherwise.

Comm 133.30 General eligibility criteria. The department shall consider whether all of the following are likely, in determining whether to accredit a production:

(1) The production would not occur in Wisconsin without the tax benefits provided under this chapter.

(2) The production would enhance economic development in Wisconsin.

(3) The production would enhance the potential for increasing the film, video or electronic game industry in Wisconsin.

(4) The production would not hurt the reputation of the state of Wisconsin.

Comm 133.31 Ineligible public programming. Public programming of a civic or governmental function is not eligible for becoming an accredited production.

Comm 133.32 Eligible and ineligible sports activities. (1) A travel promotion that addresses a sports event or sports activity is eligible for becoming an accredited production.

(2) A sports event or sports activity that is exclusively competitive in nature is not eligible for becoming an accredited production.

Comm 133.34 Obtaining accreditation. (1) APPLICATION. A potential claimant shall submit a separate accreditation application for each production, to the department, on a valid, department-prescribed form.

Note: The application form that is currently valid can be obtained from the department at P.O. Box 7970, Madison, WI, 53707; and may be available by accessing the department’s Web site at www.commerce.wi.gov., and searching for the film production accreditation program.

Note: Under s. 560.206 (1), Stats., application for accreditation must be made to the department in each taxable year for which accreditation is desired.

(2) **APPROVAL.** A production shall become accredited upon issuance of a written approval from the department, to the claimant, reflecting that the submitted application complies with this chapter and provides any other information which the department deems is necessary to evaluate applications under this subchapter.

(3) **REVOCATION.** The department may revoke any approval issued under sub. (2) if the supporting information is found to be inaccurate or significantly misleading.

Note: In accordance with s. 560.206 (3), Stats., the department will notify the department of revenue of every production accredited under this section, and of any such accreditation that is revoked.

Comm 133.36 Determination of production expenditures, resident salary or wages, and sales or use taxes. (1) To obtain the department's determinations in sub. (2), and prior to filing for tax benefits, a claimant shall submit all of the following to the department, in writing:

(a) A list and description of the production expenditures incurred during the taxable year.

(b) A list of the salary or wages that were paid as specified in sub. (2) (b), and a description of the corresponding services.

(c) Attestation that the employees who received the salary or wages as specified sub. (2) (b) met department of revenue residency criteria, at the time of being paid.

Note: The application form that is referenced under s. Comm 133.34 (1) is accompanied with instructions that describe the department of revenue's residency criteria.

(d) Verification that the \$50,000 or \$100,000 threshold in s. 71.07 (5f) (a) 1. intro., Stats., was exceeded.

Note: See s. Comm 133.20 (1) Note for a reprint of s. 71.07 (5f) (a) 1. intro., Stats.

(e) An itemized list of the sales or use taxes paid in the taxable year, under ss. 77.52 and 77.53, Stats., corresponding to an itemized list of purchased tangible personal property and taxable services that were used directly in producing an accredited production, including all stages from the final script stage to the distribution of the finished production.

(f) Demonstration that the claimant either owns the copyright in the accredited production or has contracted directly with the copyright owner or a person acting on the owner's behalf.

(g) A viable plan for commercial distribution of the finished production.

(h) Any subsequent clarification requested by the department.

(2) The department shall determine the following amounts, after accrediting a production, and shall notify the claimant of those amounts, in writing:

(a) The production expenditures that were incurred during the taxable year.

(b) The salary or wages that were paid during the taxable year by the claimant to those employees of the claimant who met both of the following criteria:

1. Rendered services in this state to produce an accredited production.
2. Were residents of this state at the time they were paid.

(c) The sales or use taxes which were paid during the taxable year and which comply with the criteria in sub. (1) (e).

(3) (a) The department may increase the amount specified in a notification issued under sub. (2), after a claimant submits adequate written justification for that increase.

(b) The department may decrease the amount specified in a notification issued under sub. (2), after determining that the information on which the amount was based is inaccurate or significantly misleading.

(c) The department shall notify a claimant, in writing, of any increase or decrease established under this subsection.

Note: In accordance with s. 560.206 (3), Stats., the department will notify the department of revenue of the production expenditures that are verified under this section.

Subchapter III – Tax Credits for Establishing a Film Production Company

Comm 133.60 Definitions. In this subchapter:

(1) The definitions in s. 71.07 (5h) (a) 1. to 4., Stats., shall apply.

Note: Sections 71.07 (5h) (a) 1. to 4., Stats., read as follows:

“1. ‘Claimant’ means a person who files a claim under this subsection and who does business in this state as a film production company.

2. ‘Film production company’ means an entity that creates films, videos, electronic games, broadcast advertisement, or television productions, not including the productions described under s. 71.07 (5f) (a) 1. a. to h.

3. ‘Physical work’ does not include preliminary activities such as planning, designing, securing financing, researching, developing specifications, or stabilizing property to prevent deterioration.

4. ‘Previously owned property’ means real property that the claimant or a related person owned during the 2 years prior to doing business in this state as a film production company and for which the claimant may not deduct a loss from the sale of the property to, or an exchange of the property with, the related person under section 267 of the Internal Revenue Code.”

(2) “Department” means the department of commerce.

(3) “Incurred” means funds equal to the total cost have been dispersed by a potential claimant.

(4) “Person” includes natural persons, fiduciaries, and corporations, unless the context requires otherwise.

Comm 133.70 Certification of expenses relating to establishing a film production company.

(1) (a) To obtain the department's preliminary approval in sub. (3), a potential claimant shall submit all of the following to the department, in writing:

1. A valid, department-prescribed application form.

Note: The application form that is currently valid can be obtained from the department at P.O. Box 7970, Madison, WI, 53707; and may be available by accessing the department's Web site at www.commerce.wi.gov, and searching for the film production accreditation program.

2. A preliminary, estimated list of the expenses referenced in sub. (5).

3. A description of how the estimated expenses will relate to establishing a film production company in Wisconsin.

4. Documentation showing that the expenses will comply with the limitations in s. 71.07 (5h) (c) 1. to 3., Stats.

Note: Sections 71.07 (5h) (c) 1. to 3., Stats., read as follows:

"Limitations. 1. A claimant may claim the credit under par. (b) 1. [for the purchase price of depreciable, tangible personal property], if the tangible personal property is purchased after December 31, 2007, and the personal property is used for at least 50 percent of its use in the claimant's business as a film production company.

2. A claimant may claim the credit under par. (b) 2. for an amount expended to construct, rehabilitate, remodel, or repair real property, if the claimant began the physical work of construction, rehabilitation, remodeling, or repair, or any demolition or destruction in preparation for the physical work, after December 31, 2007, or if the completed project is placed in service after December 31, 2007.

3. A claimant may claim the credit under par. (b) 2. for an amount expended to acquire real property, if the property is not previously owned property and if the claimant acquires the property after December 31, 2007, or if the completed project is placed in service after December 31, 2007."

- (b) A potential claimant shall provide any subsequent clarification requested by the department.

(2) The department shall consider whether all of the following are likely, in determining whether to issue a preliminary approval for establishing a film production company:

(a) The film production company would not be established in Wisconsin without the tax benefits provided under this chapter.

- (b) The film production company would enhance economic development in Wisconsin.

(c) The film production company would enhance the potential for increasing the film, video or electronic game industry in Wisconsin.

(3) If the department determines that the expenses submitted under sub. (1) are likely to comply with s. 71.07 (5h) (c) 1. to 3., Stats., and that the film production company is likely to meet the conditions in sub. (2) (a) to (c), the department shall issue a preliminary approval to the potential claimant.

(4) To obtain the department's certification in sub. (5), and prior to filing for tax benefits, a potential claimant shall submit a finalized, incurred list of the expenses referenced in sub. (5), along with an explanation for any of the expenses which differ from the preliminary list under sub. (1).

(5) In accordance with ss. 71.07 (5h), 71.28 (5h), and 71.47 (5h), Stats., the department shall certify, in writing to a potential claimant, expenses that the department determines are related to establishing a film production company in Wisconsin.

(6) (a) The department may increase the amount specified in a certification issued under sub. (5), after a potential claimant submits adequate written justification for that increase.

(b) The department may decrease the amount specified in a certification issued under sub. (5), after determining that the information on which the amount was based is inaccurate or significantly misleading.

(c) The department shall notify a potential claimant, in writing, of any increase or decrease established under this subsection.

(d) The department shall notify the department of revenue, in writing, of any decrease established under this subsection.

Subchapter IV – Submittal of Claims

Comm 133.90 Claims. (1) A claimant, as defined in subch. II or III, may file for tax benefits under this chapter using forms acceptable to the department of revenue.

(2) Claims for tax credits for film production services or film production company investments shall include at least all of the following:

(a) 1. For film production services – a copy of the determination issued by the department under s. Comm 133.36 (2).

2. For film production company investments – a copy of the certification issued by the department under s. Comm 133.70 (5).

(b) The state employer tax identification number.

(c) The North American Industry Classification System code (NAICS) for the film production company, as defined in subch. III.

(END)

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall become effective on the first day of the month commencing after publication in the Wisconsin administrative register.

File reference: Comm 133 /rules 2007LRac